

UIIdaho Law Digital Commons @ UIIdaho Law

Not Reported

Idaho Supreme Court Records & Briefs

3-14-2017

State v. Perez Respondent's Brief Dckt. 44568

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Perez Respondent's Brief Dckt. 44568" (2017). *Not Reported*. 3634.
https://digitalcommons.law.uidaho.edu/not_reported/3634

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44568
Plaintiff-Respondent,)	
)	Cassia County Case No.
v.)	CR-2015-1484
)	
JULIAN DANIEL PEREZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Perez failed to show any basis for reversal of the district court's order denying his Rule 35 motion for a reduction of sentence?

Perez Has Failed To Establish Any Basis For Reversal Of The District Court's Order Denying His Rule 35 Motion

Perez pled guilty to possession of methamphetamine and the district court imposed a unified sentence of four years, with one year fixed, suspended the sentence, and placed Perez on supervised probation for two years. (R., pp.35-38, 43-44, 62-65.) After Perez violated his probation, the district court revoked his probation, ordered the

underlying sentence executed, and retained jurisdiction. (R., pp.102-04.) Following the period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.108-12.) Perez filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.113-18.) Perez filed a notice of appeal timely from the district court's order denying his Rule 35 motion. (R., pp.119-21.)

'Mindful that he did not provide any new information in support of his Rule 35 motion,' Perez nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence. (Appellant's brief, pp.3-4.) Perez presents no argument in support of his claim. Perez has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

In State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007), the Idaho Supreme Court observed that a Rule 35 motion "does not function as an appeal of a sentence." The Court noted that where a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. Id. Thus, "[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Absent the presentation of new evidence, '[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence.' Id. Accord State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008).

Perez did not appeal the judgment of conviction in this case. On appeal, he acknowledges that he provided no new or additional information in support of his Rule 35 motion for a reduction of sentence. (Appellant's brief, p.4.) Because Perez

presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Perez's Rule 35 motion for a reduction of sentence.

DATED this 14th day of March, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of March, 2017, served a true and correct copy of the attached RESPONDENTS BRIEF by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General